

21 Members Demand Special Counsel on Wiretaps

Monday, 18 September 2006

WASHINGTON, D.C. – Tomorrow the House Judiciary Committee plans to markup the Electronic Surveillance Modernization Act, H.R. 5825, which seeks to retroactively legalize the actions by the President and his administration. In response, Rep. Nadler and 20 other Members of Congress, called for the appointment of a special counsel to investigate President Bush's illegal warrantless wiretapping program.

"The Republican-controlled Congress has repeatedly proven its unwillingness to investigate the Administration's actions. And now we know why. They don't want to hold the Administration accountable, they want to give it cover for breaking the law," said Rep. Nadler.

The letter to Attorney General Gonzales follows:

September 19, 2006

The Honorable Alberto Gonzales

Attorney General

Department of Justice

950 Pennsylvania Avenue NW

Washington, D.C. 20530

Dear Attorney General Gonzales:

We demand that a special counsel be appointed to investigate the President's secret directive that authorizes domestic eavesdropping on United States citizens, without a warrant, by the National Security Agency (NSA). This unprecedented intelligence gathering policy is clearly prohibited by law.

As U.S. District Judge Anna Diggs Taylor wrote, "The President, undisputedly, has violated the provisions of FISA for a five-year period." (ACLU v. NSA, pg. 36) Judge Taylor declared that the program "violates the APA (Administrative Procedures Act); separation of powers doctrine; the First and Fourth amendments to the United States Constitution; and the statutory law." Furthermore, she wrote that "The President of the United States ... has undisputedly violated the Fourth in failing to procure judicial orders as required by FISA." It is clear that the warrantless wiretapping program was a criminal violation of the law.

The Administration has justified the actions of the President and others in the Administration in ordering the warrantless wiretaps in clear violation of the Foreign Intelligence Surveillance Act by claiming "inherent" Presidential power under Article II of the Constitution and by claiming that Congress implicitly authorized such action in the Authorization of the Use of Military Force (AUMF) resolution dated September, 2001.

The President's reliance on the same two sources of alleged authority to enable him to establish military tribunals to try Guantanamo detainees was specifically rejected by the Supreme Court in the Hamdan case. The Hamdan decision clearly eviscerates reliance on Article II "inherent" power or on the AUMF to justify the President's clear and obvious violations of the FISA Act in approving warrantless wiretaps of American citizens in the United States.

Therefore, we demand that you appoint a special counsel to investigate and, if necessary, prosecute the President and other members of the Administration if it is found that they violated the Foreign Intelligence Surveillance Act (50 USCA §1809) which provides that a person who "engages in electronic surveillance under color of law [emphasis added] except as authorized by statute" is "guilty of an offense . . . punishable by a fine of not more than \$10,000 or imprisonment for not more than five years, or both."

FISA further states that:

"(1) Notwithstanding any other law, the President, through the Attorney General, may authorize electronic surveillance without a court order under this subchapter to acquire foreign intelligence information for periods of up to one year if the Attorney General certifies in writing under oath that – . . .

(B) there is no substantial likelihood that the surveillance will acquire the contents of any communication to which a United States person is party;" (§1802)

No such certification has been acknowledged.

It is unconscionable that the President would authorize the NSA to spy on Americans without legal authority, in violation of the Constitution and of the law – and that he states brazenly that he will continue to do so. His refusal to accede to the warrant process – and, therefore, to the Fourth Amendment – is an affront to the Constitution and the American people.

Neither the President himself, nor anyone else in the White House, can authorize an order to spy on Americans without a warrant. Since the President stated that the Attorney General and the White House counsel were part of the decision to initiate this eavesdropping, they cannot carry out an investigation.

The President and his Administration must be compelled to obey the law and to cease violating the President's Constitutional duty to "take care that the laws be faithfully executed."

We strongly urge you to appoint a special counsel to investigate these actions by the President and his associates. Only in this way can we hold the President and the Administration accountable and protect American liberties.

Sincerely,

Jerrold Nadler

Member of Congress

José E Serrano

Member of Congress

Lynn Woolsey

Member of Congress

Robert Wexler

Member of Congress

Dennis J. Kucinich

Member of Congress

Pete Stark

Member of Congress

Carolyn Maloney

Member of Congress

Maurice Hinchey

Member of Congress

Tim Bishop

Member of Congress

Jim McGovern

Member of Congress

George Miller

Member of Congress

Barbara Lee

Member of Congress

Martin Meehan

Member of Congress

Tammy Baldwin

Member of Congress

Sam Farr

Member of Congress

Edward Markey

Jim McDermott

Michael Honda

Member of Congress

Member of Congress

Member of Congress

Barney Frank

Janice Schakowsky

Hilda Solis

Member of Congress

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